FILED 1 KAREN P. HEWITT United States Attorney APR **2 4** 2008 JEFFREY D. MOORE 2 CLERK, U.S. DISTRICT COURT SOUNSERN DISTRICT OF CALIFORNIA Assistant United States Attorney 3 California State Bar No. 240595 DEPUTY United States Attorney's Office 4 Federal Office Building 880 Front Street, Room 6293 5 San Diego, California 92101 Telephone: (619) 557-7171 6 Attorneys for Plaintiff 7 UNITED STATES OF AMERICA 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF CALIFORNIA 08 GR 1316-18M 11 UNITED STATES OF AMERICA, Magistrate Case No. 08MJ1091 12 Plaintiff, STIPULATION OF FACT AND JOINT 13 MOTION FOR RELEASE OF v. MATERIAL WITNESS(ES) AND 14 JOEL NEFTALI CASTILLO-VENTURA, ORDER THEREON 15 Defendant. (Pre-Indictment Fast-Track Program) 16 17 IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES 18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Jeffrey D. 19 Moore, Assistant United States Attorney, and defendant JOEL NEFTALI CASTILLO-VENTURA, by and through and with the advice and consent of Charles Joseph Donovan, counsel for defendant, 20 21 that: 22 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing 23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, 24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count 25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) 26 27 and (v)(II). 28 JDM:rp:4/11/08

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- 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to provide the signed, original plea agreement to the Government not later than five business days before the disposition date set by the Court.
- 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or before **May 12, 2008**.
  - 4. The material witnesses, Fidel Gasga-Rubio, in this case:
    - a. Are aliens with no lawful right to enter or remain in the United States;
- b. Entered or attempted to enter the United States illegally on or about April 7, 2008;
- c. Were found in a vehicle driven by codefendant near Pine Valley, California and that defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain in the United States;
- d. Were paying \$1,800 to others to be brought into the United States illegally and/or transported illegally to their destination therein; and,
- e. May be released and remanded immediately to the Department of Homeland Security for return to their country of origin.
- 5. After the material witnesses are ordered released by the Court pursuant to this stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:
- a. The stipulated facts set forth in paragraph 4 above shall be admitted as substantive evidence;
- b. The United States may elicit hearsay testimony from arresting agents regarding any statements made by the material witness(es) provided in discovery, and such testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest of (an) unavailable witness(es); and,
  - c. Understanding that under <u>Crawford v. Washington</u>, 124 S. Ct. 1354 (2004),

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Stipulation of Fact and Joint Motion for Release of Material Witness(es) And Order Thereon in United States v. Joel Neftali Castillo-Ventura

Stipulation of Fact and Joint Motion for Release of Material Witness(es) And Order Thereon in United States v. Joel Neftali Castillo-Ventura